

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ANTONIO F. SILVEYRA,

Petitioner,

vs.

PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent.

MICHAEL CHERTOFF, Secretary of the
Department of Homeland Security,

Real party in interest.

CASE NO. 08-CV-0018 H (NLS)

SCHEDULING ORDER

On January 2, 2008, Petitioner Antonio F. Silveyra, a detainee in the custody of the Department of Homeland Security, Bureau of Immigration and Customs Enforcement, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.¹ (Doc. No. 1.) On January 9, 2008, the Court dismissed the petition without prejudice because Petitioner did not pay the \$5.00 filing fee or request to proceed in forma pauperis. (Doc. No. 2.) Petitioner has paid the

¹ Although the petition names the state of California as respondent, the Department of Homeland Security, as the agency with custody of Petitioner, appears to be the real party in interest. See 28 U.S.C. § 2242; Rumsfeld v. Padilla, 542 U.S. 426, 447 (2004) (“Whenever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States, he should name his warden as respondent.”)

1 fee and the Court reopened the case on February 4, 2008. (Doc. No. 3.) The Court orders the
2 following briefing schedule with respect to the petition:

3 1. Respondent shall file a response to the petition on or before March 14, 2008.

4 2. If Petitioner chooses to file a reply, he should do so before April 11, 2008.

5 It is unclear from the face of the petition whether Petition is challenging the validity of
6 his ongoing detention or a final order of removal. See Alvarez-Barajas v. Gonzales, 418 F.3d
7 1050, 1052 (2005) (circuit courts “sole judicial body able to review challenges to final orders
8 of deportation, exclusion, or removal”). Accordingly, Respondent should address whether the
9 petition is properly before this Court or whether the petition must be transferred to the Ninth
10 Circuit.

11 IT IS SO ORDERED.

12 DATED: February 13, 2008

13 
14 MARILYN L. HUFF, District Judge
15 UNITED STATES DISTRICT COURT
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18 COPIES TO:

19 All parties of record

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